

1 JAMES D. BOYLE, ESQ.
Nevada Bar No. 08384
2 Email: jboyle@nevadafirm.com
F. THOMAS EDWARDS, ESQ.
3 Nevada Bar No. 09549
Email: tedwards@nevadafirm.com
4 COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
5 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
6 Telephone: 702/791-0308
Facsimile: 702/791-1912

7 *Attorneys for Plaintiff*

8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 HOLIDAY SYSTEMS INTERNATIONAL OF
12 NEVADA, d/b/a HOLIDAY SYSTEMS
INTERNATIONAL, a Nevada corporation,

13 Plaintiff,

14 v.

15 VIVARELLI, SCHWARZ AND ASSOCIATES,
16 S.A. de C.V., a Mexican corporation; RESORT
SOLUTIONS INC., a Virginia corporation;
17 ROYAL ELITE VACATIONS, LLC, a Virginia
limited liability company; ROYALE ELITE
18 EXCHANGES LLC, a Virginia limited liability
company; and AARON SCHWARZ, an
19 individual,

20 Defendants.

CASE NO.: 2:10-cv-00471-MMD-(GWF)

**NOTICE OF SUBMISSION OF
AMENDED [PROPOSED] DEFAULT
JUDGMENT AGAINST DEFENDANT
VIVARELLI, SCHWARZ AND
ASSOCIATES, S.A. DE C.V.**

21 Plaintiff Holiday Systems International of Nevada ("HSI"), by and through its
22 undersigned counsel, hereby submits this Notice of Submission of Amended [Proposed] Default
23 Judgment Against Defendant Vivarelli, Schwarz & Associates, S.A. de C.V., pursuant to this
24 Court's Order entered on January 30, 2014 (Dkt. No. 104).

25 HSI submitted its Application for Default Judgment Against Defendant Vivarelli,
26 Schwarz & Associates, S.A. de C.V. (the "VSA Application") on July 18, 2013 (Dkt. No. 94).
27 Therein, VSA requested the following remedies:

28 ///

- 1 1. Statutory damages in the amount of \$100,000.00 for VSA's violations of
2 15 U.S.C. § 1114 in wrongfully, unlawfully and willfully using the
3 infringing mark CASH EXCHANGE, as alleged in Paragraphs 47 – 55 of
4 the Complaint. HSI made this election of remedies pursuant to the rights
 afforded it under 15 U.S.C. § 1117(c)(2) (*see* Affidavit of Neil Snyder (the
 "Snyder Aff."), submitted in support of the VSA Application, at ¶ 21);
- 5 2. Actual, special and consequential damages in the amount of \$186,081.73
6 for VSA's breach of contract and breach of the covenant of good faith and
 fair dealing (*see* Snyder Aff., at ¶¶ 19, 20);
- 7 3. For attorneys' fees in the amount of \$76,146.21 pursuant to the express
8 terms of the contracts at issue in this action, and pursuant to 15 U.S.C. §
9 1117(a) and LR 54-16 (*see* Affidavit of James D. Boyle, Esq. (the "Boyle
 Aff."), submitted in support of the VSA Application, at ¶¶ 6 – 22);
- 10 4. For costs in the amount of \$9,070.52 pursuant to the express terms of the
11 contracts at issue in this action, and pursuant to 15 U.S.C. § 1117(a) and
 LR 54-1 (*see* Boyle Aff., at ¶ 22);
- 12 5. For the entry of permanent injunctive relief against VSA pursuant to 15
13 U.S.C. § 1116; and
- 14 6. Prejudgment and post-judgment interest as permitted by applicable law.

15 See VSA Application, at 3:25 thru 4:14; 12:10-14.

16 This Court granted the VSA Application in its entirety on January 17, 2014 (Dkt. No.
17 99), and entered a Permanent Injunction against VSA on this same date (Dkt. No. 100).

18 Subsequently, HSI submitted a [Proposed] Default Judgment Against Defendant
19 Vivarelli, Schwarz & Associates, S.A. de C.V. on January 29, 2014 (Dkt. No. 102). On January
20 30, 2014, this Court denied HSI's proposed judgment without prejudice because "[t]he amount
21 of damages requested in the proposed judgment exceed the amount requested in the application
22 for default judgment and granted by the Court."

23 In reviewing the VSA Application, counsel for HSI believes that the error lies in the
24 requested damages award regarding VSA's breach of contract and breach of the covenant of
25 good faith and fair dealing. In the Snyder Aff., and Exhibit A-6 submitted in support thereof,
26 HSI set forth the total of all monies due and owing to HSI as of July 17, 2013, pursuant to the
27 Sales Agreement at issue in this matter, together with accrued interest and late payments, as
28 \$186,071.73. However, in the VSA Application and in the initial proposed judgment, HSI's

1 counsel erred in asserting that the amount due and owing to HSI for these actual, consequential
2 and special damages was \$280,139.04—an amount based upon a calculation of interest and late
3 fees for a 3.5 year period dating from the initial breach by VSA. Counsel for HSI apologizes to
4 the Court for the error.

5 Attached hereto as Exhibit A is an Amended [Proposed] Default Judgment Against
6 Defendant Vivarelli, Schwarz & Associates, S.A. de C.V., which comports with the damages and
7 remedy request made in the VSA Application.

8 DATED this 30th day of January, 2014.

9 **COTTON, DRIGGS, WALCH,**
10 **HOLLEY, WOLOSON & THOMPSON**

11 /s/ F. Thomas Edwards
12 JAMES D. BOYLE, ESQ.
13 Nevada Bar No. 08384
14 F. THOMAS EDWARDS, ESQ.
15 Nevada Bar No. 09549
16 400 South Fourth Street, Third Floor
17 Las Vegas, Nevada 89101

18 *Attorneys for Plaintiff*
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Exhibit A

JAMES D. BOYLE, ESQ.
Nevada Bar No. 08384
Email: jboyle@nevadafirm.com
F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 09549
Email: tedwards@nevadafirm.com
COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HOLIDAY SYSTEMS INTERNATIONAL OF
NEVADA, d/b/a HOLIDAY SYSTEMS
INTERNATIONAL, a Nevada corporation,

Plaintiff,

v.

VIVARELLI, SCHWARZ AND ASSOCIATES,
S.A. de C.V., a Mexican corporation; RESORT
SOLUTIONS INC., a Virginia corporation;
ROYAL ELITE VACATIONS, LLC, a Virginia
limited liability company; ROYALE ELITE
EXCHANGES LLC, a Virginia limited liability
company; and AARON SCHWARZ, an
individual,

Defendants.

CASE NO.: 2:10-cv-00471-MMD-(GWF)

**AMENDED [PROPOSED] DEFAULT
JUDGMENT AGAINST DEFENDANT
VIVARELLI, SCHWARZ AND
ASSOCIATES, S.A. DE C.V.**

THIS MATTER having come before the Court pursuant to Plaintiff Holiday Systems of Nevada's ("HSI") Application for Default Judgment Against Defendant Vivarelli, Schwarz & Associates, S.A. de C.V. (the "VSA Application") (Dkt. No. 94), and the Court having reviewed the pleadings and papers submitted in support thereof and having granted the VSA Application in its entirety (*see* Dkt. No. 99), now, therefore,

It is hereby ORDERED, ADJUDGED and DECREED that judgment is entered against Defendant Vivarelli, Schwarz & Associates, S.A. de C.V. ("VSA") as follows:

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- 1 1. HSI shall recover statutory, actual, special and consequential damages against
2 VSA in the amount of **\$286,081.73**, consisting of the following:
 - 3 a. Pursuant to 15 U.S.C. § 1117(c)(1), HSI is hereby awarded statutory
4 damages against VSA in the amount of \$100,000.00 for VSA's violations
5 of 15 U.S.C. § 1114, which shall bear prejudgment interest at the statutory
6 allowance of 28 U.S.C. § 1961 as set forth below; and
 - 7 b. HSI is hereby awarded actual, special and consequential damages against
8 VSA in the total amount of \$186,081.73 for VSA's breach of contract and
9 breach of the covenant of good faith and fair dealing, which shall bear
10 prejudgment interest at the statutory allowance of N.R.S. § 17.130 as set
11 forth below.
- 12 2. HSI is hereby awarded attorneys' fees incurred in the prosecution of this action
13 against VSA in the amount of \$76,146.21, pursuant to the terms of the Sales
14 Agreement at issue in this action and 15 U.S.C. § 1117(a).
- 15 3. HSI is hereby awarded its costs incurred in the prosecution of this action in the
16 amount of \$9,070.52, jointly and severally with Defendant Aaron Schwarz, as set
17 forth in the Bill of Costs filed by HSI pursuant to LR 54-1, the terms of the Sales
18 Agreement at issue in this action, and 15 U.S.C. § 1117(a).
- 19 4. HSI is awarded prejudgment statutory interest in the amount of \$38,212.87,
20 pursuant to 28 U.S.C. § 1961 and N.R.S. § 17.130.¹
- 21 5. HSI shall recover the aggregate judgment amount of \$409,511.33 against VSA, as
22 denoted in Paragraphs 1 – 4 above.

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27 ¹ The calculation of prejudgment interest pursuant to 28 U.S.C. § 1961 and N.R.S. § 17.130 is made through January
28 31, 2014 for the damages awarded to HSI under federal law and state law (Paragraphs 1(a) and 1(b) above),
respectively.

IT IS SO ORDERED.

DATED this ____ day of January, 2014.

UNITED STATES DISTRICT JUDGE